

RECEIVED

ORIGINAL  
FILE

DEC 20 1991

Before the  
Federal Communications Commission  
Washington, DC 20554

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
Advanced Television Systems )  
and Their Impact upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. is a signatory to the Joint Broadcaster Comments filed on this date and supports the comments as stated therein. We have chosen to supplement the views expressed in the Joint Broadcaster Comments with these individual comments in order to discuss concerns that are special to networks in the ATV context -- the dual network rule and simulcasting as applied to networks. We will also make an additional proposal applicable to simulcasting in general.

1. Dual Network Rule

The Notice at paragraph 9 proposes to suspend application of the television multiple ownership rules to permit ownership of "paired" NTSC and ATV channels until conversion to exclusive ATV service. However, the Notice does not address the analogous problem with respect to the dual network rule, 47CFR Sec. 73.658(g), which prohibits a network company from simultaneously operating more than one network of television broadcast stations in identical or overlapping geographic areas. For reasons similar

to those advanced for suspension of the multiple ownership rules, the Commission should suspend the dual network rule on a limited basis for the duration of the transition period to allow network companies to operate both an NTSC and an ATV network. The suspension of the rule should also encompass those circumstances where the network's NTSC affiliate in a market fails for some reason to be awarded a "paired" ATV facility. The network would then be faced with the loss of an outlet for its ATV component which it would seek to restore by affiliating with another ATV station in the market. This should be recognized as a necessary and logical extension of the Commission's goal of expediting ATV service and smoothing the transition to exclusive ATV broadcasting.

## 2. Simulcasting as applied to the networks

The major networks have traditionally played a leading role in the financing and production of high-budget, high-quality entertainment, sports and news programming. The networks have also been responsible for fostering the development and introduction of both new program forms and technical advances in television presentation. In the ATV sphere, ABC, CBS and NBC have been major financiers of proponent system testing as founding members of the Advanced Television Test Center. Barring economic disaster, it can be expected that the major networks will continue to play a leading role in ATV both in supporting technical change and in producing programs.

In order to make it possible for the networks to fulfill this leadership role, we believe the Commission should consider giving the networks the flexibility to negotiate with their affiliates over linking affiliate clearance of a program on the ATV channel to clearance of substantially the same program on the paired NTSC outlet. The networks' need for a simulcast commitment from its affiliated stations is based on the need for assured outlets to justify the significant incremental production cost of ATV programs. (This would obviously not be necessary to the extent the Commission decides to adopt a simulcast requirement applicable to stations generally.)

In our view, once an affiliated station makes the judgment that the network program being offered meets the needs of its local community and decides to clear it in one format, there is no public interest in ensuring that the affiliate be free to make a different judgment for the second channel. The same should be true with respect to preemption. If, in the affiliate's reasonable opinion, the network offering is not suitable for broadcast in the community or if there is a program from another source of greater local or national importance that warrants preemption, that decision logically should apply to the entire audience served by the affiliate, whether on the NTSC channel or the ATV channel.

We do not request that the Commission adopt a special simulcast rule for network affiliates. We do seek Commission recognition that networks be permitted to negotiate simulcast

commitments with their affiliates without being found in violation of the Commission's rules governing the network affiliate relationship (specifically, the rules covered in 47 CFR 658(a),(d) and (e)).

### 3. Simulcasting, in general

We support the Commission's analysis, in the Notice at 45, that simulcasting will serve to insure that NTSC consumers are not relegated to receiving inferior programming during the transition period and that a simulcasting requirement should be designed so as not to interfere with the flexibility broadcasters require to ensure that ATV succeeds in the marketplace.

We also believe that in designing a simulcast requirement it would be prudent for the Commission to require from the very outset of the transition period that simulcasting be required on the ATV channel unless the ATV channel is being used to transmit programming in the ATV mode. In commenting on Ashbacker, the Joint Broadcaster Comments correctly conclude that Ashbacker does not preclude limiting eligibility to existing broadcast stations. Among other reasons, ATV is an improvement of the existing broadcast service and not a new service. However, if the second channel were to be used for separate NTSC programming, a Commission decision to limit eligibility might be challenged on the grounds that the additional grant of spectrum is being used for a new and separate service and not merely an enhancement of existing service. This concern comes clearly into focus if one considers the fact that, depending upon the rate of ATV set penetration and what rule

the Commission adopts to terminate the transition period, the transition period could last as long as a generation. If the Commission were to adopt this suggestion and preclude the use of the ATV simulcast channel for separate NTSC programming, broadcasters would have also greater incentive to produce and broadcast in ATV, thus serving the Commission's goal of expediting the introduction of ATV in the marketplace.

Summary

For the reasons stated, we would urge the Commission to suspend the dual network rule for the duration of the transition period to allow network companies to operate both an NTSC and an ATV network, and to permit networks to negotiate with their affiliates to require single clearance decisions for paired NTSC and ATV programs. In addition, we believe that in designing a simulcast requirement it would be prudent for the Commission to require from the very outset of the transition period that simulcasting be required on the ATV channel unless the ATV channel is being used to transmit programming in the ATV mode.

Respectfully submitted,

By: 

Sam Antar  
Vice President, Law & Regulation

Capital Cities/ABC, Inc.  
77 West 66th Street  
New York, NY 10023

Counsel for Capital Cities/ABC, Inc.

December 19, 1991